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CHECK POINT SOFTWARE
TECHNOLOGIES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FINJAN, INC. a Delaware Corporation,
Plaintiff,

v.

CHECK POINT SOFTWARE
TECHNOLOGIES INC., a Delaware
Corporation, CHECK POINT SOFTWARE
TECHNOLOGIES LTD., an Israeli Limited
Company,
Defendants.

Case No. 5:18-cv-02621-WHO

**DEFENDANT CHECK POINT
SOFTWARE TECHNOLOGIES, INC.'S
BRIEF RE: CASE NARROWING AND
INFRINGEMENT CONTENTIONS**

Judge: Hon. William H. Orrick

1 **I. INTRODUCTION**

2 If history is any guide, Plaintiff Finjan, Inc. (“Finjan”) will litigate this case by inundating
 3 Defendant Check Point Software Technologies, Inc. (“Check Point”) with dozens of broadly-
 4 stated infringement theories asserted in the alternative for each of dozens of claims and products.
 5 Through this approach, Finjan can avoid revealing the small number of infringement theories it
 6 *actually* intends to present at trial, while leaving itself nearly infinite flexibility to change
 7 positions as the case progresses. Each time Finjan has brought a case, the same script has played
 8 out, defendants move to compel or strike, and the court is forced to step in. It need not be this
 9 way.

10 This District’s Patent Local Rules (“PLR”) “are designed to require parties to crystallize
 11 their theories of the case early in the litigation and to adhere to those theories once they have been
 12 disclosed.” *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 (Fed. Cir.
 13 2006) (citation and internal quotation marks omitted). Taken together with the 2013 Federal
 14 Circuit Model Order Limiting Excess Patent Claims and Prior Art (“2013 Model Order”), the
 15 PLR *should* allow this case to proceed in an orderly, merits-focused way. In particular, the Court
 16 should: (a) limit the number of claims and prior art reference at issue in the lawsuit according to
 17 the limits and schedule provided in the 2013 Model Order; and (b) require Finjan to strictly
 18 comply with the PLR by providing separate infringement contentions for *each* accused product,
 19 that identify the specific lines of code that Finjan contends meet *each* limitation of *each* asserted
 20 claim.

21 **II. ARGUMENT**

22 The Court made clear during the Case Management Conference that it did not want to
 23 adopt a novel case management strategy—and instead asked the parties to submit proposals based
 24 on: (a) the 2013 Model Order; and (b) other court orders involving Finjan’s contentions. The
 25 following proposal combines the 2013 Model Order, the Patent Local Rules, and prior orders
 26 issued by courts that have wrestled with Finjan’s approach to infringement contentions.

1 **A. Timeline and Claim Limits Under the 2013 Model Order**

2 The 2013 Model Order¹ provides a two-phase process for limiting asserted claims and
3 prior art references, keyed off: (1) a defendant's production of documents sufficient to show
4 operation of the accused instrumentalities; and (2) claim construction.

5 First, the Model Order provides that, within 40 days of a defendant producing documents
6 sufficient to show the operation of the accused products, the plaintiff must serve a Preliminary
7 Election of Asserted Claims, asserting no more than 10 claims per patent, and no more than 32
8 total claims. 2013 Model Order, at 1. Not later than 14 days from service of that pleading, the
9 defendant must serve a Preliminary Election of Asserted Prior Art, asserting no more than 12
10 prior art references against each patent, and no more than 40 total references. *Id.*

11 Check Point has already provided Finjan access to the source code for all of the accused
12 products, and it has provided Finjan with a list of *all* of the products which might be at issue.² *See*
13 Declaration of Clement Roberts ("Roberts Decl."), ¶¶ 2, 3. If the parties had been following the
14 2013 Model Order from the outset, Finjan's 40-day clock for providing a Preliminary Election of
15 Asserted Claims would expire on September 4, 2018. But because Finjan has yet to identify the
16 specific products it intends to accuse or to begin its source code review, Check Point proposes
17 that the Court order Finjan to comply with the Model Order within 40 days *of the order on this*
18 *motion*. And, to make sure that Finjan has sufficient time, Check Point further proposes that the
19 Court *extend* the time for Finjan's infringement contentions so that they are served *with* Finjan's
20 Preliminary Election of Asserted Claims. Check Point further proposes that its Preliminary
21 Election of Prior Art and its invalidity contentions be due 40 days thereafter. A table summarizing
22 these proposed deadlines is attached hereto as Appendix A.

23
24 ¹ Although the Federal Circuit withdrew the 2013 Model Order shortly after issuance, courts have
25 nevertheless relied on the order for guidance in crafting effective limits in patent cases. *See, e.g.,*
26 *Altera Corp. v. PACT XPP Techs., AG*, No. 14-CV-02868-JD, 2015 WL 3830982, at *2 (N.D.
Cal. June 19, 2015). The 2013 Model Order is available at
<http://patentlyo.com/media/docs/2013/07/model-order-excess-claims.pdf>.

27 ² Check Point maintains a price list on its website and, for this reason, Finjan could have—with
28 the exercise or reasonable diligence—figured out which Check Point products it might want to
accuse. Despite this, Finjan claimed it could not specifically identify the accused products, so
Check Point produced the list attached to the Roberts Declaration as Exhibit 2.

Under the 2013 Model Order, the second phase of claim/prior art selection occurs after the Court issues its claim construction order. 2013 Model Order, at 2. In line with the 2013 Model Order, we propose that Finjan’s Final Election of Asserted Claims be due 28 days after the issuance of the Court’s claim construction order, and that—in that selection—Finjan be required to identify no more than 5 asserted claims per patent from the 10 previously identified, and no more than 16 claims in total. *Id.* Also in line with the 2013 Model Order, Check Point proposes that its Final Election of Asserted Prior Art be due 14 days after Finjan’s selection, and that Check Point may identify no more than 6 asserted prior art references per patent from among the 12 previously identified, and no more than 20 references in total. *Id.*

Adopting the 2013 Model Order will help advance the goal of making this case about the *best* claims and defenses and will (among other things) help ensure that Court is presented with the most pressing and important issues on summary judgment.

B. Infringement and Invalidity Contentions Under the Patent Local Rules

Under PLR 3-1,³ Finjan’s infringement contentions must, among other things, (1) identify, separately for each asserted claim, each accused instrumentality, in as specific a manner as possible, PLR 3-1(b); (2) identify *specifically where* and *how* each limitation of each asserted claim is found within each accused instrumentality, PLR 3-1(c); (3) identify, for each claim which is alleged to have been indirectly infringed, any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement, PLR 3-1(d); and (4) disclose, for each limitation of each asserted claim, whether Finjan contends that the limitation is present under the doctrine of equivalents, and how.⁴ PLR 3-1(e).

The purpose of these requirements is to “require parties to crystallize their theories of the case early in the litigation,” *O2 Micro*, 467 F.3d at 1364 (citation and internal quotation marks omitted), so as to “further the goal of full, timely discovery and provide all parties with adequate notice of and information with which to litigate their cases,” *Genentech, Inc. v. Trustees of Univ.*

³ PLR 3-3 contains corresponding requirements for Check Point’s invalidity contentions.

⁴ Although PLR 3-1 does not contain an express “and how” requirement in this element, courts in this district have routinely interpreted it to contain such an obligation. *See* cases cited below in Section (C)(4).

1 of *Pa.*, Case No. C 10–2037 LHK(PSG), 2012 WL 424985, at *1 (N.D. Cal. Feb. 9, 2012)
 2 (citation and internal quotation marks omitted). “The rules thus seek to balance the right to
 3 develop new information in discovery with the need for certainty as to the legal theories.” *O2*
 4 *Micro*, 467 F.3d at 1366. District courts have wide discretion in enforcing the PLR. *Id.* at 1365–
 5 66; *SanDisk Corp. v. Memorex Prods., Inc.*, 415 F.3d 1278, 1292 (Fed. Cir. 2005).

6 **C. The Court Should Compel Finjan to Strictly Comply with the Local Rules.**

7 This is not the first time Finjan has brought suit in this District on these and related
 8 patents. In each case, Finjan’s gambit is the same. Finjan serves contentions that cite vaguely to
 9 entire products, functions, marketing terms, and screenshots, without *specifically* saying which
 10 instrumentalities are accused or how they are alleged to infringe. *See, e.g., Finjan, Inc. v.*
 11 *Proofpoint, Inc.*, No. 13-CV-05808-HSG, 2015 WL 1517920, at *6 (N.D. Cal. Apr. 2, 2015)
 12 (“Finjan’s infringement contentions are largely comprised of generic marketing literature and
 13 screenshots of the type routinely rejected by courts in this District”; “These unexplained
 14 references comprise the majority of Finjan’s over 1,000 pages of claim charts,”; “Even more
 15 troublingly, the little explanation Finjan does provide is framed in high-level generalities that do
 16 not specifically relate to the claim elements identified in each Claim.”); *see also* Transcript of
 17 Record at pp. 77-78, *Finjan, Inc. v. Cisco Systems, Inc.*, No. 5:17-cv-00072-BLF (SVK) (“*Finjan*
 18 *v. Cisco*”) (N.D. Cal. Oct. 12, 2017), Dkt. No. 83 (ordering Finjan to amend its infringement
 19 contentions “across the board”); *Finjan, Inc. v. Sophos, Inc.*, No. 14-CV-01197-WHO, 2015 WL
 20 5012679 (N.D. Cal. Aug. 24, 2015) (ordering Finjan to amend infringement contentions). Finjan
 21 hopes that the Court will conflate *volume* and *specificity* and lack the time and inclination needed
 22 to sift through the superabundance of the former to see that the latter is absent.

23 Check Point hopes to break the pattern by asking the Court to make clear, at the outset,
 24 that Finjan must *fully* comply with PLR 3-1 by serving infringement contentions that specifically
 25 identify where and how each limitation of each asserted claim is found within each accused
 26 instrumentality, including by: (1) providing pinpoint source code citations to the elements in each
 27 accused Check Point product; (2) avoiding open-ended citation to “exemplary” products; (3)
 28 setting forth any infringement theories based on the doctrine of equivalents with limitation-by-

1 limitation analysis, not boilerplate reservations; and (4) for any indirect infringement theories,
 2 identifying the alleged direct infringement, the alleged acts of inducement or contribution to that
 3 infringement, **and** the relationship between them. *See* PLR 3-1(c), (d), and (e).

4 **1. The Court Should Require Finjan to Provide Source Code Citations.**

5 PLR 3-1 requires Finjan to explain “specifically where and how each limitation of each
 6 asserted claim is found” within each accused product. “This burden cannot be met simply by
 7 parroting claim language or referencing screenshots and/or website content.” *Finjan, Inc. v.*
 8 *Proofpoint, Inc.*, 2015 WL 1517920, at *6. Rather, where, as here, an accused product “includes
 9 computer software based upon source code made available to the patentee, patentees must
 10 provide ‘pinpoint citations’ to the code identifying the location of each limitation.” *Genentech*,
 11 2010 WL 11509141, at *2 (citation omitted); *see also* Civil Minute Order, at p. 1, *Finjan, Inc. v.*
 12 *FireEye, Inc.*, No. C 4:13-03133 SBA (JCS) (“*Finjan v. FireEye*”), (N.D. Cal. Oct. 16, 2017) Dkt.
 13 No. 134 (“Finjan shall provide pinpoint source code citations in its Infringement Contentions.”);
 14 *Finjan, Inc. v. Sophos, Inc.*, 2015 WL 5012679, at *3 (ordering Finjan to provide pinpoint source
 15 code citations, including “the actual full directory paths, file names, function or procedure names
 16 and line numbers”) (internal alterations omitted); *Vasudevan Software, Inc. v. Int’l Bus. Machines*
 17 *Corp.*, No. C 09-cv-05897-RS (HRL), 2011 WL 940263, at *7 (N.D. Cal. Feb. 18, 2011) (“[T]he
 18 authority is clear that a plaintiff should provide citations once a plaintiff has had a sufficient
 19 opportunity to review the source code[.]”). “The bottom line is that, after a plaintiff-patentee has
 20 had a reasonable opportunity to review the source code for the defendant’s accused software
 21 product, the patentee’s time for trolling the proverbial waters for a theory of infringement comes
 22 to an end, and the patentee must fish or cut bait with respect to its specific theory of infringement
 23 by providing PICs to the defendant that clearly identify and explain how the source code for the
 24 accused product infringes upon specific claims for the patent-in-suit.” *Diagnostic Sys. Corp. v.*
 25 *Symantec Corp.*, No. SACV 06-1211 DOC (ANx), 2009 WL 1607717, at *5 (C.D. Cal. June 5,
 26 2009).

27 Check Point wrote to Finjan and asked it to come review the source code on July 26,
 28 2018, expressly because it wanted Finjan to produce source code-specific infringement

1 contentions. *See* Roberts Decl., ¶ 2. Check Point even provided Finjan a comprehensive list of all
 2 Check Point products that could potentially be at issue. *Id.*, ¶ 3; Ex. 2. All Finjan must do is
 3 specify the accused products, and it may start reviewing the source code on a mutually agreed
 4 schedule. *Id.*, Ex. 1. Yet Finjan has not selected the products it wants to review, much less begun
 5 to review the code. *Id.* ¶ 5. The bottom line is that Finjan has access to the code, and the Court
 6 should therefore require Finjan to comply with both the PLR and the authorities cited above by
 7 including pinpoint source code citations in its infringement contentions. *See Big Baboon Corp. v.*
 8 *Dell, Inc.*, 723 F. Supp. 2d 1224, 1228 (C.D. Cal. 2010) (“Once source code has been provided to
 9 the plaintiffs, . . . courts have required plaintiffs to supplement their infringement charges with
 10 pinpoint citations.”); *Am. Video Graphics, L.P. v. Elec. Arts, Inc.*, 359 F. Supp. 2d 558, 561 (E.D.
 11 Tex. 2005) (requiring source-code level supplementation within 30 days of code availability).⁵

12 Check Point would be prejudiced were it forced to enter claim construction without the
 13 benefit of Finjan’s *specific* theories of infringement. *See, e.g., Dynetix Design Sols. Inc. v.*
 14 *Synopsys Inc.*, No. 11-cv-05973 PSG, 2012 WL 6019898, at *3 (N.D. Cal. Dec. 3, 2012).
 15 Although claim construction focuses on the intrinsic record, the theories at issue in the case must
 16 be crystallized before Check Point can know which terms must be construed. Indeed, absent
 17 specific infringement theories, Check Point will have no way to know *which aspects* of the
 18 asserted claims are really in dispute, and will enter claim construction without knowing which
 19 terms, phrases, and concepts actually *matter* to a merits adjudication. And given the Federal
 20 Circuit’s cases holding that all claim construction disputes relevant to a merits determination must
 21 be resolved before trial, that could create an enormous unnecessary burden on the Court as well.

22 Finjan has previously justified its refusal to provide pinpoint source code citations on
 23 several grounds, all of which should be (and frequently have been) rejected.

24 First, Finjan has claimed that source code citations are never required, relying on *Finjan,*
 25 *Inc. v. Proofpoint, Inc.*, 2015 WL 9023166. But *Proofpoint* is at odds with the other district court

26 ⁵ If, despite having had access to Check Point’s source code since July, Finjan asserts that it
 27 cannot review the code and provide pinpoint citations by the deadline for serving its infringement
 28 contentions, the Court should order Finjan to supplement its infringement contentions with
 pinpoint source code citations within a reasonable time (such as 30 days) thereafter.

1 decisions in this district—which is why courts in this district (including both this Court the
 2 Magistrate Judge assigned to this case) have repeatedly ordered Finjan to provide source code
 3 level contentions. *See, e.g., Finjan v. FireEye*, Dkt. No. 134 (decided by Magistrate Judge Spero);
 4 *Finjan v. Sophos*, 2015 WL 5012679.

5 Second, Finjan has argued that pinpoint source code citations may be required in
 6 interrogatory responses, but not infringement contentions. But this distinction is irrelevant,
 7 because as this and many other courts have noted, “[t]his district’s patent local rules require
 8 disclosures early in a case and streamline discovery by replacing the series of interrogatories that
 9 parties would likely have propounded without them.” *Finjan v. Sophos*, 2015 WL 5012679, at *1
 10 (internal quotation marks and citation omitted). And at least one court has rejected this very
 11 argument before. *See Finjan v. FireEye*, Dkt. No. 129, at p. 4 (Finjan argument) and Dkt. No. 134
 12 (ordering Finjan to provide pinpoint source code citations in infringement contentions). *See also*
 13 Roberts Decl., ¶ 4; Ex. 3 (mooting this argument by serving a source-code citation interrogatory).

14 Finally, Finjan has argued that pinpoint source code citations are evidence, and that it
 15 need not provide them because it is not obligated to prove its case in the infringement
 16 contentions. It is true that PLR 3-1 distinguishes “between the required identification of the
 17 precise element of any accused product alleged to practice a particular claim limitation, and every
 18 evidentiary item of proof showing that the accused element did in fact practice the limitation.”
 19 *AntiCancer, Inc. v. Pfizer, Inc.*, 769 F.3d 1323, 1330–31 (Fed. Cir. 2014) (internal citation
 20 omitted). But pinpoint source code citations are necessary here to precisely *identify* each element
 21 alleged to practice each claim limitation and we are not asking for *every* evidentiary item of
 22 proof. Put differently, while source code citations may be used as evidence, they are *also* the only
 23 effective means of precisely identifying *where* in each accused product Finjan believes the
 24 limitations of the asserted patents are located. *See Genentech*, 2010 WL 11509141, at *2 (where
 25 software products are accused, patentees must provide “pinpoint citations to the code identifying
 26 the location of each limitation.”). Indeed, Finjan itself previously admitted that several of the
 27 patents at issue are directed to specific elements that must be identified through source code. *See*
 28

1 Roberts Decl., ¶ 6.⁶ And Check Point is *not* asking for Finjan to be required to identify all of the
 2 evidence on which it intends to rely to show infringement. Thus, for example, we fully expect that
 3 Finjan will rely on documents and testimony *as well as source code* when it comes time to prove
 4 its case. But, Check Point needs to know *what* is being accused, and because the accused products
 5 *are* just a collection of source code the only way to identify the accused instrumentalities with a
 6 meaningful level of specificity is by pointing to the code itself.

7 **2. The Court Should Require Finjan to Avoid Catch-Alls.**

8 The Court should require Finjan to set forth its infringement positions without open-ended
 9 disclaimers or qualifications. PLR 3-1(c) requires identification of “*specifically where and how*
 10 each limitation of each asserted claim is found within each Accused Instrumentality.” (emphasis
 11 added). In previous cases, Finjan has frequently refused to take specific infringement positions,
 12 hedging its bets by providing generic contentions pointing to high-level “exemplary” structures
 13 and components of accused products, effectively arguing that somewhere within the identified
 14 structure or component, the infringing instrumentality may be found through the given example
 15 or in some other (unspecified) way. *See, e.g., Finjan v. FireEye*, Dkt. No. 134, at p. 1 (“Finjan
 16 shall delete references in the Infringement Contentions and Claim Charts to the infringement as
 17 ‘exemplary and not limiting’ or ‘by way of example and not limiting’”); *Finjan v. Proofpoint*,
 18 2015 WL 1517920, at *7 (“Finjan was required to expressly discuss the particular claim elements
 19 identified in each Claim and map those elements onto the features of the allegedly infringing
 20 products. . . . Neither the Court nor the Defendants should be required to guess which aspects of
 21 the accused products allegedly infringe each claim element.”).

22 To address this issue the Court should prohibit the use of open-ended placeholder phrases
 23 like “such as,” “for example,” “exemplary and not limiting,” or “by way of example and not
 24 limiting.” Such open-ended language is improper and regularly stricken from infringement
 25 contentions in this District. *See, e.g., Word to Info Inc. v. Google Inc.*, No. 15-CV-03486-WHO,

26 ⁶ At a hearing in *Finjan v. Proofpoint*, on Proofpoint’s motion to strike, Finjan argued that it
 27 could provide more detailed contentions after seeing Proofpoint’s source code, explaining that “a
 28 lot of these patents really go to—they’re directed at what specific rules, routines, source code,
 elements that may be occurring in the back end.” Roberts Decl., Ex. 4, p. 4

2016 WL 3648605, at *5 n.4 (N.D. Cal. July 8, 2016) (warning plaintiff its improper “use of open-ended placeholder phrase like ‘such as’ and ‘for example’ [would] not enable it to rely on infringement theories not specifically articulated in its infringement contentions.”).

3. The Court Should Require Finjan to Specifically Identify the Accused Products.

The Court should require Finjan to provide separate and specific contentions for each product it is accusing. PLR 3-1(b). This identification must be “as specific as possible,” and include the “name or model number” if known. *Id.* The PLR do not permit “broad categorical identifications” nor “representative examples.” *Geovector Corp. v. Samsung Elecs. Co.*, No. 16-CV-02463-WHO, 2017 WL 76950, at *4 (N.D. Cal. Jan. 9, 2017) (“Rule 3-1(b) does not permit parties to identify accused products by using categorical or functional identifications, or limited, representative examples.”). In past cases, Finjan has repeatedly used vague and catch-all language to identify accused products, and the courts have stricken it. *See, e.g., Finjan v. FireEye*, Dkt. No. 134, at p. 1 (“Finjan shall delete, in its identification of accused products ‘at least (without limitation)’ and ‘including but not limited to’”); *Finjan v. Cisco*, Dkt. No. 83, at p. 77-8 (same); *Finjan v. Proofpoint, Inc.*, 2015 WL 1517920, at *6 (same). Finjan has access to Check Point’s source code, and a comprehensive list of Check Point’s products. We have offered to give Finjan access to any reasonable number of prior versions it would like to review. *See Roberts Decl.*, Ex. 2. Thus Finjan can, and should, be required to specifically identify and accuse each product separately, without the use of broad categorical identifications and representative examples.

4. The Court Should Require Finjan to Avoid Boilerplate Reservations.

If Finjan intends to rely on the doctrine of equivalents, the Court should require it to comply with PLR 3-1(e) by identifying each limitation of each asserted claim that is alleged to be present under the doctrine of equivalents in each accused instrumentality. Finjan has frequently sought to avoid this requirement through the use of boilerplate doctrine of equivalents contentions. *See Finjan v. Sophos*, 2015 WL 5012679, at *4 (“Finjan must do more than vaguely reference the alleged function, way, and result of the whole accused product. . . . Finjan must specify in what way [Sophos’s] products infringe under the doctrine of equivalents, or drop the

contention altogether.”); *Finjan v. Proofpoint*, 2015 WL 1517920, at *10 (striking all doctrine of equivalents in Finjan’s infringement contentions). The Court should not permit this and should instead require Finjan to provide a limitation-by-limitation analysis that fairly reveals its theory. *Rambus Inc. v. Hynix Semiconductor Inc.*, No. C-05-00334 RMW, 2008 WL 5411564, at *3 (N.D. Cal. Dec. 29, 2008) (requiring “limitation-by-limitation analysis, not a boilerplate reservation.”); *see also Geovector*, 2017 WL 76950, at *7.

Similarly, PLR 3-1(d) requires specific indirect infringement theories be set forth in infringement contentions. Finjan should not be permitted to rely on “boilerplate language that simply claims an accused infringer provided instructions on, advertised, or promoted the use of an accused product, without describing which instructions, advertisements, or promotions led to what infringing behavior.” *Comcast Cable Commc’ns, LLC v. OpenTV, Inc.*, No. C 16-06180 WHA, 2017 WL 2630088, at *4 (N.D. Cal. June 19, 2017); *see also France Telecom, S.A. v. Marvell Semiconductor, Inc.*, No. 12–cv–04967 WHA (NC), 2013 WL 1878912, at *5 (N.D. Cal. May 3, 2013). Again, Check Point asks the Court to make it clear at the outset that Finjan must comply with the PLR by specifically tying any alleged direct infringement by third parties to specific conduct by Check Point that allegedly induced or contributed to that infringement. *See id.*

III. CONCLUSION

Finjan has full access to Check Point’s source code and therefore should be able to fully comply with the requirements in PLR 3-1 by serving complete and detailed infringement contentions that include pinpoint source code citations.⁷ Indeed, it is Check Point’s hope that, by requiring that compliance at the outset, and by adopting the Federal Circuit’s 2013 Model Order, we can focus this case on the merits and avoid the situation Finjan repeatedly has created in other cases, where the defendant is faced with a kaleidoscope of vaguely worded alternative and exemplary theories that frustrate any ability to develop a meaningful defense on the merits.

⁷ To the extent the Court denies Check Point’s request to order Finjan’s compliance with the requirements set forth herein, Check Point asks that the denial be without prejudice to Check Point later bringing a motion to strike Finjan’s infringement contentions, should the contentions prove insufficient and unmanageable.

1 Dated: August 28, 2018

Respectfully submitted,

2 ORRICK, HERRINGTON & SUTCLIFFE LLP

3
4 By: /s/ Clement S. Roberts
5 Clement S. Roberts
6 Attorneys for Defendants
7 CHECK POINT SOFTWARE
8 TECHNOLOGIES, INC.
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**Appendix A:
Proposed Case Schedule**

Note: non-bolded dates previously set by Court order following Initial Case Management Conference on August 14, 2018. *See* Dkt. No. 24.

Event	Applicable Rule or Order	Ordered or Agreed Date/Deadline
Finjan Preliminary Election of Asserted Claims selecting no more than 10 claims per patent, and no more than 32 total claims	2013 Model Order, at 1	Within 40 days of the Court's Order on Case Narrowing and Infringement Contentions
Finjan Disclosure of Infringement Contentions, including pinpoint source code citations	Pat. L.R. 3-1	
Finjan Document Production Accompanying Disclosure	Pat. L.R. 3-2	
Check Point Preliminary Election of Asserted Prior Art identifying no more than 12 prior art references against each patent, and no more than 40 total references	Model Order, at 1	Within 40 days of Finjan's Preliminary Election of Asserted Claims and Disclosure of Infringement Contentions
Check Point Disclosure of Invalidity Contentions	Pat. L.R. 3-3	
Check Point Document Production Accompanying Invalidity Contentions	Pat. L.R. 3-4	
Exchange of Proposed Terms for Construction	Pat. L.R. 4-1	December 14, 2018
Exchange of Preliminary Claim Constructions and Extrinsic Evidence	Pat. L.R. 4-2	January 11, 2019
Damages Contentions	Pat. L.R. 3-8	January 15, 2019
Joint Claim Construction and Prehearing Statement	Pat. L.R. 4-3	January 25, 2019
Responsive Damages Contentions	Pat. L.R. 3-9	February 14, 2019
Completion of Claim Construction Discovery	Pat. L.R. 4-4	February 25, 2019
Claim Construction Briefs – opening brief	Pat. L.R. 4-5(a)	March 11, 2019
Claim Construction Briefs – responsive brief	Pat. L.R. 4-5(b)	March 25, 2019

Event	Applicable Rule or Order	Ordered or Agreed Date/Deadline
Claim Construction Briefs – reply brief	Pat. L.R. 4-5(c)	April 1, 2019
Claim Construction Tutorial	Pat. L.R. 4-6	April 19, 2019 at 10:00 a.m.
Claim Construction Hearing	Pat. L.R. 4-6	April 26, 2019 at 10:00 a.m.
Finjan Final Election of Asserted Claims: no more than 5 asserted claims per patent from the 10 previously identified, and no more than 16 claims in total	2013 Model Order, at 2	Within 28 days of the issuance of the Court's Claim Construction Order
Check Point Final Election of Asserted Prior Art: no more than 6 asserted prior art references per patent from among the 12 previously identified, and no more than 20 references in total	2013 Model Order, at 2	Within 14 days of Finjan's Final Election of Asserted Claims
Close of fact discovery		December 13, 2019
Opening expert reports		March 11, 2020
Rebuttal expert reports		April 24, 2020
Close of expert discovery		June 12, 2020
Opening summary judgment briefs		July 17, 2020
Responsive summary judgment briefs		August 14, 2020
Reply summary judgment briefs		September 11, 2020
Summary judgment hearings		Heard by September 30, 2020
Final Pretrial Conference		December 14, 2020 at 2:00 p.m.
Jury Trial		January 25, 2021 at 8:30 a.m.